

No. 101000-1

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

CLAIRE REILLY-
SHAPIRO,

Respondent,

v.

ANTHONY S.
LOMBARDO,

Appellant.

ANSWER TO MOTION
FOR EXTENSION FOR
TIME TO FILE
PETITION FOR
REVIEW

A. Relief Requested.

Respondent Claire Reilly-Shapiro asks this Court to deny petitioner Anthony Lombardo's motion for extension of time to file his petition for review of the Court of Appeals decision, entered on May 3, 2022, denying his motion to

modify the commissioner's ruling dismissing his appeal for his failure to timely file the report of proceedings, after being granted multiple extensions and being expressly warned on December 17, 2021 that if "the report of proceedings is not filed by December 30, 2021, this case will be dismissed without further notice of this Court."

B. Reasons This Court Should Deny the Requested Extension.

The Court of Appeals denied petitioner's motion to modify the commissioner's ruling dismissing his appeal on May 3, 2022. If petitioner wished to seek review of the Court of Appeals decision, he was required to file a petition for review by June 2, 2022, which he failed to do. *See* RAP 13.4(a) ("a petition for review must be filed within 30 days after the decision is filed").

Extensions for petitions for review are governed by RAP 18.8(b). Unlike other appellate rules, which may be waived or altered to "serve the ends of justice," RAP 18.8(a), this Court will only extend the time within which a

party must file a petition for review “in extraordinary circumstances and to prevent a gross miscarriage of justice.” RAP 18.8(b). “The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section.” RAP 18.8(b).

This Court should deny petitioner’s motion for extension because he fails to establish “extraordinary circumstances” under RAP 18.8(b) to warrant extending the time under RAP 13.4 for filing his petition for review. There is nothing “extraordinary” about petitioner filing his petition for review five days after the deadline under RAP 13.4(a). In fact, untimely filing has been characteristic of petitioner’s actions throughout this proceeding. From the start, petitioner has dragged his feet in pursuing this appeal.

When not completely ignoring deadlines, petitioner has waited until the last minute to file his pleadings. In fact,

his notice of appeal was untimely because he filed it at 4:46 p.m. on April 14, 2021, on the last day before it was due under RAP 5.2(a), and filed it in the wrong court, by filing it in the Court of Appeals rather than in the superior court. RAP 5.1(a). Even if he had filed the notice in the trial court, as required by RAP 5.1(a), it would have been untimely as the King County Superior Court clerk's office closes at 4:30 p.m., and thus would be considered "filed at the beginning of the next business day," which would be April 15, 2021—the day after the notice of appeal was due. GR 30(c).

Even after petitioner was informed by the Court of Appeals that he was required to file his notice of appeal in the trial court, he waited until June 2, 2021, over a month before doing so. Petitioner was only granted an extension to file his notice because RAP 18.8(b) had been suspended under this Court's order No. 25700-B-659.

That the parties' children and respondent were sick with COVID-19, starting on May 26, 2022, is not an

“extraordinary circumstance” to excuse petitioner’s failure to timely file his petition for review by June 2, 2022. Extraordinary circumstances are “instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control.” *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998); *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988). “This rigorous test has rarely been satisfied in reported caselaw.” *Reichelt*, 52 Wn. App. at 765.

Petitioner did not act with “reasonable diligence” to ensure the timely filing of his petition for review. As set out in respondent’s declaration, the petitioner, who did not get sick, was impacted only minimally by the children getting COVID. At most, the children’s sickness impacted less than 24 hours during the 30-day period petitioner had to prepare and file a petition for review under RAP 13.4(a).

In addition to there being no “extraordinary circumstances,” an extension is not necessary to “prevent a gross miscarriage of justice.” RAP 18.8(b). In fact, it would be a gross miscarriage of justice if an extension were granted. The parenting plan, from which petitioner appeals, is for the parties’ two young sons, who were ages two and three when the parenting plan was entered nearly 16 months ago, on March 15, 2021. The parties’ young sons deserve finality in the parenting decisions that the trial court thoughtfully made in their best interests after an extensive trial. “[E]xtended litigation can be harmful to children,” *Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003), and this appeal should not be further, and unnecessarily, dragged out by granting petitioner an extension because “the emotional and financial interests” affected by parenting decisions are “best served by finality.” 149 Wn.2d at 127.

C. Conclusion.

This Court should deny petitioner's request for an extension to file his petition for review.

I certify that this answer is in 14-point Georgia font and contain 854 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 8th day of July, 2022.

SMITH GOODFRIEND, P.S.

By: /s/ Valerie A. Villacin
Valerie A. Villacin
WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109-3007
(206) 624-0974

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 8, 2022, I arranged for service of the foregoing Answer to Motion for Extension of Time to File Petition for Review, to the Court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Lucia R. Levias DuBois Cary Law Group PLLC 927 N Northlake Way, Suite 210 Seattle WA 98103 8871 Lucia@duboislaw.net	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Anthony S. Lombardo 420 25th Avenue E Seattle WA 98112 alombardo4640@gmail.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 8th day of July,
2022.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

July 08, 2022 - 12:54 PM

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Appellate Court Case Number: 101,000-1
Appellate Court Case Title: In the Matter of the Marriage of Claire Reilly-Shapiro and Anthony Lombardo

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In re the Marriage of:

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SHAPIRO,

Respondent,

v.

ANTHONY S.
LOMBARDO,

Petitioner.

DECLARATION OF
CLAIRE REILLY-
SHAPIRO

Respondent Claire Reilly-Shapiro, in response to petitioner Anthony Lombardo's motion to extend the filing deadline for his petition for review, hereby declares and states as follows:

1. I am the respondent in this matter. I have reviewed Anthony's motion for extension, and his reasons for requesting one—our sons contracting COVID-19—is meritless. As Anthony acknowledges in his motion, he did not get sick, and our sons' illness only impacted him minimally.

2. On Thursday, May 26, 2022, our older son was sent home from school with a fever. As I was at work, Anthony picked up both children from their schools when the school called. This was not Anthony's usual residential time, but our sons remained with him during the day until I picked them up at 5:40 p.m.

3. I had the children from 5:40 p.m. on May 26 until 6:00 p.m. on Friday, May 27, 2022, which was the start of Anthony's usual residential time. As Memorial Day weekend was granted to Anthony under the parenting plan, our sons remained with Anthony until they were returned to my care at 9:00 a.m. on Tuesday, May 31, 2022.

4. The only “additional” times Anthony had with our sons, other than the first day the boys were sent home from school, were on Thursday, June 2, 2022 and Friday, June 3, 2022. Normally Anthony’s residential time would have started on Thursday at 5:00 p.m., but since our sons could not go to school due to illness, and I could not expose a babysitter to COVID-19, and I had to work, Anthony started his residential time with our sons at 9:00 a.m. His residential time would have ended on Friday, June 3 at 9:00 a.m. but he kept them until 5:30 p.m. on that day so that I could work.¹

5. Anthony’s claim that he cared for our sons during my residential time “because she knows my care is best” (Motion 2) is baseless. The only reason that Anthony had extra time during this period is because I was at work,

¹ As the petition for review had to be filed by June 2, 2022, this additional time on June 3, 2022 had no impact on Anthony’s ability to timely file his petition.

it was during a time when our sons would otherwise be in school, and I could not hire a babysitter as I would not want to expose anyone else to COVID-19.

6. I also dispute Anthony's claim that it was harder than usual for him to watch our sons when they were sick. (Motion 2) Our older son's illness was very mild and he did not require any special medical care or treatments. In fact, it was likely easier for Anthony because our normally active preschoolers were taking extra-long naps.

7. Our sons' illness impacted Anthony's time for filing his petition for review by less than 24 hours. Anthony had most of May to prepare his petition for review, and two full days on May 31 and June 1, to ensure the timely filing of his petition by June 2, 2022. If the additional time he had with our sons on May 26 and June 2 truly impacted his ability to timely file his petition by June 2, 2022, it is only

because he waited until the last minute to begin preparing this petition.

8. Our sons and I deserve finality in the parenting decisions that the trial court thoughtfully made after seven days of trial. I was finally able to breathe a sigh of relief when I was informed that petitioner had not filed a petition for review by June 2, 2022, believing that our family could now move forward. I was dismayed, but unfortunately not completely surprised, when I learned that five days after the petition was due, Anthony filed a belated petition.

9. I ask this Court to deny his request for an extension to file his petition for review.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 8 day of July, 2022 at Seattle, Washington.

Claire RS
Claire Reilly-Shapiro

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 8, 2022, I arranged for service of the foregoing Declaration of Claire Reilly-Shapiro, to the Court and to the parties to this action as follows:

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